



1410-72-P

LIBRARY OF CONGRESS

Copyright Royalty Board

[Docket No. 14-CRB-0006 DART SR (CO/FA) (2013)]

Distribution of 2013 Digital Audio Recording Royalty Funds

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Determination.

SUMMARY: The Copyright Royalty Judges announce their determination regarding distribution of the Digital Audio Recording Technologies (DART) royalties deposited with the Licensing Division of the Copyright Office during 2013 to copyright owners and featured recording artists. The Judges issued their determination to the participants in the proceeding in March 2016 and received one motion for rehearing. On May 6, 2016, the Judges denied the motion and forwarded the determination to the Register of Copyrights for the mandatory 60-day review prior to publication in the Federal Register in accordance with 17 U.S.C. § 801(f)(1)(D) & 803(c)(6).¹

DATES: Effective Date: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Kimberly Whittle at (202) 707-7658 or at crb@loc.gov.

ADDRESSES: The final distribution order is also published on the agency's Web

¹ The short delay in publication of this determination was a result of a staff shortage.

site at www.loc.gov/crb.

SUPPLEMENTARY INFORMATION:

The purpose of this proceeding is to distribute to copyright owners and featured recording artists Digital Audio Recording Technologies (DART) royalties deposited with the Licensing Division of the Copyright Office during 2013 under the Audio Home Recording Act of 1992, Pub. L. No. 102-563, 106 Stat. 4237 (codified as amended at 17 U.S.C. §§ 1000-1010).

Prior to the commencement of this proceeding, AARC submitted notice that it had reached a settlement with all but five claimants to the 2013 DART Sound Recordings Fund, Copyright Owners' and Featured Artists' subfunds, and requested a partial distribution of 98% of those funds. *See AARC Notice of Settlement and Request for Partial Distribution ...* (Aug. 19, 2014). In December 2014, the Copyright Royalty Judges (Judges) granted AARC's request for a partial distribution of 98% of the DART funds at issue in this proceeding. *See Order Granting AARC's Request for Partial Distribution ...* (Dec. 19, 2014). The Copyright Royalty Judges (Judges) ordered the remaining 2% of the fund held pending settlement or adjudication of controversies raised by the non-settling claimants: David Powell, George Clinton, Eugene Curry, Kami Talpa, and Herman Kelly. All of the non-settling parties were appearing in this proceeding *pro se*. Their filings appeared to claim only from the Copyright Owners Subfund.

The Judges commenced the captioned royalty distribution proceeding by published notice in March 2015. *See* 80 FR 15632 (Mar. 24, 2015). The notice announced April 23, 2015, as the deadline for interested parties to file a Petition to

Participate in this proceeding. The Judges received only one valid and timely Petition to Participate (PTP), that of the Alliance of Artists and Recording Companies, Inc. (AARC). The Judges did, however, receive actual notice, in the form of email, late-filed papers, and correspondence, from other parties² claiming an interest in the sound recording royalty funds held for copyright owners and featured artists.

In June 2015, AARC, on its own behalf and on behalf of Jeffrey E. Jacobson, Esq. (together, the Settling Parties), requested distribution of the retained 2% of funds in both Sound Recordings subfunds. Because the Judges were aware of the *pro se* claimants, they denied the AARC motion without prejudice and provided a second opportunity for parties in interest to file a PTP, together with an explanation for the failure to file in the first instance. The Judges set a second deadline for PTPs of September 15, 2015. Only Mr. Curry filed a timely PTP, on his own behalf and on behalf of TAJAI Music, Inc. (TAJAI). As Mr. Curry is not an attorney (and thus ineligible to represent a corporate entity in a proceeding, *see* 37 CFR § 350.2, the Judges dismissed the portion of his PTP relating to TAJAI. *See Order Accepting Petition ... and Setting Schedule* (Jan. 7, 2016). Mr. Curry's PTP identified his claim as one to the Copyright Owners' subfund.

AARC subsequently requested distribution of the retained 2% of funds in the Sound Recordings Featured Artists' subfund. The Judges approved this request, finding no controversy relating to the Featured Artists' subfund. *See Order Granting AARC's Request for Final Distribution ...* (Jan. 21, 2016). With regard to the Copyright Owners' subfund, the Judges ordered a paper proceeding under 17 U.S.C. § 803(b)(5). *See Order*

² *See, e.g.*, papers from George Clinton and Ronald Ford (September, November, and December 2014), Eugene Curry/TAJAI Music (various dates between September 2014 and January 2016), and Herman Kelly (between December 2014 and October 2015).

Granting AARC's Request ... (Jan. 21, 2016). The “Settling Parties” filed their Written Direct Statement on February 8, 2016. Mr. Curry filed no Written Direct Statement.

On January 28, 2016, the Judges received a paper purporting to be a “Written Direct Statement and Petition to Participate in Respect, Answer to Court’s Order Dated Jan 7, 2016” from Mr. Herman Kelly. On February 8, 2016 the Settling Parties moved to reject Mr. Kelly’s filing. On March 3, 2016, the Settling Parties filed a Motion to Dismiss Eugene Curry/TAJAI Music, Inc.’s Claims to Any Portion of the 2013 Sound Recordings Funds.

Having considered all the filings relating to the 2013 Sound Recordings DART funds, the Judges find:

1. Mr. Kelly failed to file a Petition to Participate in this proceeding by the first or second deadline set by the Judges. Mr. Kelly also failed to offer any basis by which the Judges might consider excusable neglect for his failure to make a timely filing, as required by the Judges’ procedural rules and orders. The Judges **DISMISS** Mr. Kelly’s untimely and invalid PTP. Moreover, even if Mr. Kelly had timely filed his combined “Written Direct Statement and Petition to Participate,” the Judges would have dismissed his PTP as deficient, because it failed to (1) state the basis for his claimed interest and (2) provide evidence of sales of any sound recording to which he holds rights. Mr. Kelly’s Written Direct Statement also does not provide factual evidence; rather, it asks the Judges to “consider his settlement compromise request for a *[sic]* equal share of the 2% featured recording artist subfund, copyright owners subfund”³ Accordingly,

³ As noted, the Judges ordered final distribution of the Featured Artists subfund in January 2016.

Mr. Kelly's filing fails to establish a right to any of the funds remaining in the DART Sound Recordings royalty fund for 2013.

2. The Settling Claimants presented uncontroverted evidence that neither Mr. Curry nor TAJAI have a right to sound recording royalties for any year. *See* Michael L. Stern WDT at 3-5, Cynthia Oliver WDT at 1.⁴ The sound recording rights to the music claimed by Mr. Curry are owned by Universal Music Group.⁵ There are no reports of sales of the music claimed by Mr. Curry during 2013. Stern WDT at 3-
3. The Settling Parties are entitled to distribution of all remaining funds in the 2013 DART Sound Recordings fund.

Therefore, the Judges hereby **ORDER** that claims asserted by all but the Settling Parties to the 2013 DART Sound Recordings Fund, including both the Featured Artists' and the Copyright Owners' subfunds, are **DENIED**.

As required by 11 U.S.C. § 803(c), the Judges issue this determination, which triggers the deadline for motions for rehearing. *See* 17 U.S.C. § 803(c)(2).

March 24, 2016.

SO ORDERED.

Suzanne M .Barnett,
Chief United States Copyright Royalty Judge.

David R. Strickler
United States Copyright Royalty Judge.

Jesse M. Feder
United States Copyright Royalty Judge.

⁴ The Settling Parties submitted the witnesses' written direct testimony and supporting exhibits in their timely filed Written Direct Statement.

⁵ The Judges make no finding with respect to whether Mr. Curry or TAJAI Music, Inc. has any rights to the musical work underlying the sound recording.

Dated: July 5, 2016.

Suzanne M. Barnett,
Chief United States Copyright Royalty Judge.

Approved by:

David S. Mao,
Librarian of Congress.

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